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The Solicitors' Journal

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The Solicitors' Journal

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Current Topics.

The New Judge.

WHILE THERE may be those of a severely economic turn of mind who would have contended that the appointment of a new judge, in place of the late Mr. Justice SALTER, might fittingly have been postponed till just before the opening of the January sittings, we take the view that the Lord Chancellor was well advised, in the interests of the prompt administration of justice, to fill the vacancy without delay. Nor do we think that there will be any valid criticism of the person upon whom the Lord Chancellor's choice has fallen. Sir MALCOLM MACNAGHTEN, the new judge, comes of a distinguished legal stock, his father, Lord MACNAGHTEN, having been one of the most notable law lords within the memory of any one living. Regarding him Lord SUMNER truly said that "he possessed in a happy combination the gifts of listening with patience and deciding without doubt, after bringing to bear his great range of unobtruded learning and a clear practical appreciation of business and of character." It may be that Sir MALCOLM is not so erudite a lawyer as his father, but he inherits not a little of that lambent wit with which his sire was able to light up the discussion of the most abstruse questions of law, and he has moreover enjoyed, if not a commanding practice, yet one which in its variety has been an excellent preparation for the judicial work that will now fall to be discharged by him. One of the latest cases in which he was engaged was the important one of *Scammell & Nephew Limited* v. *Hurley & Others*, which he argued in the Court of Appeal with consummate ability and force, an argument which was crowned with success. Sir MALCOLM, who took silk in 1919, has, in his capacity of Recorder of Colchester, had experience of judicial work which will now stand him in good stead, especially when it will fall to him to preside in the criminal courts.

Proceedings By and Against the Crown.

OUR READERS who have no time to read through Mr. G. S. ROBERTSON's big volume on the above subject, but who wish for more information on it than one of our pages could contain (see p. 478, *ante*), may be recommended to buy the print of Sir LESLIE SCOTT's lecture (4to., 8 pp., 1s., published at these offices). Sir LESLIE has been a law officer of the Crown, and was a member of Lord BIRKENHEAD'S committee to consider the matter which, under Lord HALDANE'S direction, drafted a bill to deal with it. His qualifications for handling the subject, therefore, can be taken for granted, and he does so both impartially and lucidly, though, in respect of discovery, against the Crown, he brings forward no reasons why the practice of Scotland and Australia, giving the judge the ultimate decision, cannot be considered as feasible for England. He agrees with the committee that the frequent waiver by the Crown of its strict rights is no substitute for a just law between Crown and subject, and he even suggests that there have been cases where the Crown officials have beaten down a just claim for damages in tort on the threat that, if not accepted, the prerogative would be set up (p. 6). He also stresses the clear distinction which should be drawn, if the matter is to receive logical treatment, between the Crown (which in practice, as he points out, means a Government department) in its administrative and political relations with the subject, and in its business relations. Plainly, the Crown must have special powers in certain matters, for example, to prevent smuggling, and it may be right to give preferential process to tax-gathering departments. It is not right, however, to leave the subject without effective remedy when a lorry owned by a government department runs over him, so long as other owners of carelessly-driven lorries have to pay, and there seems no reason why the laws of contract and tort should not hold an equal balance between subject and Crown. Sir LESLIE, in his lecture, tested knowledge of the Crown procedure by information and prerogative writ by requesting those of his large and learned audience who claimed it, to hold up their hands. One only anwered him. He then reminded, or perhaps it would be more accurate to state, informed his hearers, that by writ of "*capias*" or of "immediate extent" the Crown can seize the person of a subject until its officials are satisfied that its claims against him, whether well-founded or otherwise, are or will be met. Such procedure is, stark and naked, the "*droit administratif*," and should forthwith be abolished, the more so as Sir LESLIE points out, since in practice, those who could set these processes in motion do not venture to do so, and they are obsolete. As to costs, the scathing passage from a judgment of Lord DARLING, quoted *ante*., p. 478, may be compared with the less scornful but not less convincing pronouncement of TALBOT, J., cited by Sir LESLIE, on the injustice of the present rule. This interesting lecture should, in conclusion, be one more nail in the coffin of the anonymous and invisible Crown official who is blocking the Crown Proceedings Bill, and has prompted the present Attorney-General to make the unwarrantable assertion that it is "controversial."

When is Discussing a Verdict Libellous ?

ON p. 833 in our last issue we published a note on the case of *Smith* v. *National Magazine Company Ltd.*, reported in *The Times* newspaper of the 30th November, 1928. From this report it appears that the article complained of contained certain words which were alleged by the plaintiff to convey a suggestion that the gallows had been cheated of its prey. In the note of this case no mention was made of this fact. It is not clear from the report whether or not this innuendo influenced the jury's verdict to any extent, but in assessing the value of this case in reference to its application to newspaper articles, these words cannot be ignored. Though probably mere journalistic rhetoric not meant to have special application they were certainly injudicious and outside that sober discussion which should be safe. It may well be that but for these words the verdict would have been different.

The Jury out of Hand.

THE JURY is seen at its worst in trials where an element of politics can be introduced as the "red herring." The *Nardini Case* last month, in Paris, offers a most unfortunate example of this. An Italian named DI MODIGNO shot and killed the Italian Vice-Consul in Paris for refusing to grant a passport to the former's wife. The offence was murder, but a jury, ill-directed, and carried away by anti-Fascist sentiment, returned a verdict of manslaughter; a slight sentence followed, to the serious embitterment of the relations between two great peoples. Now, another Paris jury is reported to have delivered an equally surprising verdict, without the excuse of political bias, a verdict of acquittal where the jury members themselves admit it should have been guilty. They add to their verdict this truly astonishing rider: "For the second time in two days the jury finds itself faced with conscientious scruples. Being desirous of bringing in a verdict of guilty, but being unable to obtain any formal guarantee as to the amount of the penalty, it expresses the opinion that legislative reform should give the jury itself power to define the consequences of its verdict." That is to say, a jury, refusing to exercise its present powers in accordance with its oath, seeks greater powers. What "formal guarantee" is there that the new powers would not be equally abused? There are States where the jury is, by law, allowed to fix the sentence. Like everything else in this world there are arguments for and against the practice. On the whole it seems to English minds unsound. There is much more chance of reasonable uniformity if the sentence be left to the trained judge. He at least will have some consistent scale of values, and will further be, to an extent, kept within accepted limits by the professional opinion of his brethren. The jury, however, would have no guide save their feelings, and injustice, would follow. A jury is the best judge of fact: it is very unreliable in its estimates of relative guilt.

Charity and Workmen's Compensation.

THE INTER-RELATIONSHIP of the above was considered in the recent case of *Summers* v. *Pyne* at Cardiff County Court. The applicant claimed compensation in respect of injuries he had received from a circular saw, whereby the middle finger of one hand was severed and the fourth finger was badly damaged. The case for the respondent, a firewood merchant, was that out of pity he had given shelter to the applicant, who had been down and out, and that the work had been done in return for kindness, and not under a contract of service. The applicant's case was that although in the first place he was taken into the respondent's house, and supplied with food and clothing for charity, the work was done subsequently in accordance with express orders. His Honour Judge THOMAS held that in the circumstances a contract of service was implied between the parties, and the applicant was entitled to an award on the basis of 30s. a week for a period to be agreed. The tests as to the existence of a contract of service, and whether an injured person is a workman, were recently reviewed in *Watson* v. *Government Instructional Centre*, 72 SOL. J. 384. The Court of Appeal there held that the relationship between the parties was that of teacher and pupil, and was not governed by the decisions on charities, such as *Porton* v. *Central (Unemployed) Body for London*, 1909, 1 K.B. 173. In that case a man on temporary work under the Unemployed Workmen Act, 1905, was held to be engaged under a contract of service and therefore entitled to an award as a workman. A contrary decision was given in *Burns* v. *Manchester and Salford Wesleyan Mission*, 1908, 1 B.W.C.C. 305, where it was held that no contract of service existed with persons working in a labour yard in return for board and lodging and occasional small sums of money, and that such persons were therefore not workmen. In cases such as the first-named, *supra*, a strong argument for the applicant is that as the fruits of his labour have an economic value he is in employment and therefore entitled to an award.

Motor Car Insurances.

ONE OF the last of the late Mr. Justice SALTER'S judgments involved a point of some interest to motor car insurers: *Page* v. *Scottish Insurance Corporation*, 45 T.L.R. 103. F had insured his car with the Corporation under a policy which covered him against accidental damage to his car, and against claims by third parties. F allowed P, who was a motor dealer and expert, to drive his car, and while driving it P, through his negligence, ran into another car belonging to S and caused damage both to it and to the car he was driving. S brought an action against both F and P and recovered judgment. The Corporation disputed their liability to indemnify F against S's claim, but were quite willing to repair the damage to F's car. They employed P to do the repairs, and P brought the present action against the Corporation for repairs executed at their request. The Corporation did not dispute the amount, but said that F had a claim against P for an equal amount, as damages for negligence, and that they, as his insurers, were subrogated to his rights, and therefore entitled to set off an amount equal to the cost of repairs. Counsel for the plaintiff took the ingenious point that no right of subrogation arose until the insurer had paid the assured; that in this particular case the Corporation had not settled with F in respect of S's claim, and had not yet paid P the amount that he was claiming in the action, and that therefore the right of subrogation had not yet arisen. The learned judge held that as the Corporation had always disputed their liability to indemnify F against S's claim, their right to be subrogated was not affected, and that it was not necessary for them to go through the formality of first paying P's account before being entitled to subrogation. He therefore held there was a good defence by way of set off.

Electricity and Nuisance.

THE INCREASING size and number of electricity-generating stations in course of construction in this country in furtherance of the policy of a wider application of electrical power in industry must inevitably give rise to the possibility of adjoining property owners or occupiers becoming subjected to a nuisance in one form or another. In this connexion the recent majority decision of the Court of Appeal in the case of *Farnworth* v. *Manchester Corporation* is of the greatest importance. The corporation, under an authorising private Act of Parliament, constructed an electricity power station at Barton-upon-Irwell, from which the sulphur-charged fumes invaded the adjoining property of the plaintiff, causing damage and interfering with his comfort and health. The plaintiff's application for an injunction to restrain the corporation from continuing this nuisance, which they admitted, and for damages caused to him, came before Mr. Justice TALBOT at the Manchester Assizes, and he gave judgment for the defendant corporation, on the ground that the power station was of a kind which Parliament had authorised. The Court of Appeal, Lord Justice LAWRENCE dissenting, has reversed that decision, and Lord Justice SCRUTTON pointed out that the fact that a generating station on certain land was authorised by Parliament did not, when there was a nuisance clause in the Act or Order, relieve the undertakers from paying compensation for damage resulting from a nuisance. Moreover, he was not satisfied that the corporation had taken all reasonable precautions to ascertain the cause of or to prevent the nuisance, and he allowed the appeal, suspending the operation of the injunction for one year to enable the corporation to adopt measures to terminate or mitigate the nuisance. This decision should be advantageous in at least two directions: (1) to stimulate research with a view to minimising the type of nuisance here complained of; and (2) to impress upon Parliament and other authorities the necessity of carefully formulating the provisions for compensation for damage caused by electrical undertakings of this nature.

Landlord and Tenant Act, 1927.

By S. P. J. MERLIN, Barrister-at-Law.

IX.

The Conduct of a Claim by a Tenant for Loss of Goodwill—with Suggestions as to Necessary Evidence.

Where a tenant of business premises seeks legal advice and assistance in relation to the conduct of a claim for the loss of goodwill, or for a new lease, the first thing (assuming of course he has a case under s. 4) to be ascertained by an adviser is whether the tenant is in time to make his claim duly and in the manner prescribed by s. 4 of the Act, that is to say :—

(1) In the case of a *tenancy terminated by notice* within *one month* after the *service* of the notice on the tenant, or

(2) In any other case not more than thirty-six nor less than twelve months before the termination of the tenancy.

A great number of hard cases have already occurred on and since 25th March, 1928, in which there has been a failure or omission for some reason or other on the part of the tenant to make his claim within the above specified limits of time. The statutory rules of the County Courts have attempted to provide some measure of relief for slips of this nature. For instance, r. 14 (3) says that, when a party is applying for directions in one of those matters " the registrar may at any time report to the judge in relation to any such application, and the judge may thereupon give or forward by post to the registrar such directions in writing as may be necessary, including an order for the *extension of any time limited for the doing of any act or thing provided for by the Act or this Order.*" But whether this rule enables the court to vary the time, expressly prescribed by the Act, in those cases where the tenant is out of time, has not yet, I think, been judicially determined.

Assuming that the tenant has duly made his claim the rules then enforce upon the parties a stay of a period of two months, during which they may compose the matter themselves without having recourse to the tribunal. This is sanctioned by r. 5 (4), which provides that : " No proceedings shall be commenced until the expiration of two months from the date whereon the plaintiff shall have served on the defendant his claim for compensation."

The said period of two months is related to proviso (*b*) in s. 4 of the Act, which says that " the tenant shall not be entitled to compensation in respect of such goodwill if *within two months* after the making of the claim the landlord serves on the tenant notice that he is willing and able to grant to the tenant, or obtain the grant to him of a renewal of, the tenancy of the premises at which the trade or business is carried on at such rent and for such term not exceeding fourteen years as, failing agreement, the tribunal may consider reasonable ; and if the tenant does not within one month from the service of the notice send to the landlord an acceptance in writing of the offer the tenant shall be deemed to have declined the offer."

It is to be noted that the tenant must make his mind up as to this offer of a new tenancy *within one month*, otherwise he is out of court. In some cases this offer places the tenant in a dilemma. Before he accepts it he should appreciate that he virtually agrees to accept a new lease on such terms as to rent as the tribunal may consider reasonable, and the new rent may perchance be very different to the old. If he refuses he loses all his remedies under ss. 4 and 5 of the Act.

The following rule as to how the new rent is to be fixed and determined by the tribunal is given in sub-s. (3) of s. 4 : " Where an offer of the renewal of a tenancy by the landlord under this section is accepted by the tenant, the rent fixed by the tribunal shall be the rent which in the opinion of the tribunal a willing lessee other than the tenant would agree to give and a willing lessor would agree to accept for the premises having regard to the terms of the lease, but irrespective of the value of any goodwill which may have become attached to the premises by reason of the tenant or his predecessors in title having carried on thereat a particular trade or business." In order to establish his claim to monetary compensation under s. 4 the tenant must prove to the satisfaction of the tribunal the series of facts or propositions contained in the following extract from s. 4 : " *That by reason of the carrying on by him, or his predecessors in title, at the premises of a trade or business for a period of not less than five years goodwill has become attached to the premises by reason whereof the premises could be let at a higher rent than they would have realised had no such goodwill attached thereto.*"

As a rule, a tenant has no difficulty in proving most of the above facts, and it is only in regard to the two issues : (1) Whether the tenant has " *attached* " any goodwill to the premises, and (2) whether the landlord *could* let the premises at a higher rent by virtue of such goodwill, that there is much contention.

Let us take a concrete case of a butcher carrying on a family trade as such in the High-street of a medium-sized provincial town, with a lease, say, at a rental of £200 per annum, for twenty-one years expiring Lady Day, 1929. We will assume (1) that his turnover twenty-one years ago when he opened the business there was £4,000 for the first year, (2) that such turnover has gradually increased (under his continued proprietorship and intimate personal management) from that figure to £10,000 a year, (3) that his net annual profits have also gradually risen from £400 to £1,000, and (4) that there has been a general advance of rents in this High-street of 100 per cent. during the currency of the twenty-one years' lease.

On these facts there arises a presumption that the tenant has attached a valuable goodwill to these premises as premises for the carrying on of the business of a butcher.

The tenant, we will assume, would have preferred a renewal of the lease rather than have monetary compensation for loss of goodwill. It appears, however, from the negotiatory correspondence passing between the landlord and the tenant that the landlord has been offered a rent of £500 a year from a large company who have a chain of butchers' shops all over the country, and that he had not received any higher offer than £400 a year from multiple shop companies in other trades for whom the goodwill of a family butcher would have no attraction or value whatsoever. In these circumstances the tenant may decide on consideration that it is not worth his while applying for a new lease, and elects to claim monetary compensation under s. 4 in lieu of a new term under s. 5.

In this hypothetical, but common enough, case the tenant will not have much trouble in adducing the necessary evidence in proof of his claim. His books will prove his turnover and profits in 1908 and 1928, and their gradual increase during the intervening years, and the fact that the landlord has had *a higher offer from a rival in the butchering business* will itself go a long way towards proving that goodwill relating to such a business has attached itself to the premises.

(*To be continued.*)

Housing: Some Legal Difficulties.

By RANDOLPH A. GLEN, M.A., LL.B.

(*Continued from p.* 838).

III.

The Repair of Individual Houses.

In my first two articles on this subject, I dealt with the repair of individual houses by local authorities at the expense of owners. In this I deal with the power to compel owners either to carry out the repairs themselves or to suffer the consequence of closing and demolition orders.

"Closing" orders are now provided for in ss. 11, 12 and 13 of the Act of 1925, and take the form of an "order prohibiting the use of the house for human habitation until, in the judgment of the local authority, the house is rendered fit for that purpose."

In *Robertson* v. *King*, L.R. 1901, 2 K.B. 265, a decision that a closing order could not be made, in respect of a dwelling-house which had not been used for human habitation for over five years and was not intended to be so used, was reversed. After this case the words, in the definition of "dwelling-house" in s. 29 of the Act of 1890, "means any inhabited building and," were repealed by the Act of 1909 and are not contained in the present definition in s. 135 of the Act of 1925.

A dwelling-house, which the local authority have ordered to be closed for human habitation under a bye-law made in pursuance of the Public Health Acts and has not since been used for that purpose, does not on that account cease to be a "dwelling-house," and can therefore be made the subject of a closing order under the Housing Act: *Slight* v. *Portsmouth Corporation* (1906, 70 J.P. 259; 4 L.G.R. 635).

In holding that the expression "dwelling-house" includes a block of separate dwelling-houses, Lord DUNEDIN, L.P., said that the expression "may include a whole tenement, even though that tenement comprises four dwelling-houses . . . If it were the fact that one of them was in a good state, that closing order, on appeal, would be held to be a bad closing order, because it would close something that ought not to be closed . . . But if the authority is of opinion that the whole tenement is bad, I do not see why it should not say so. You may have a dwelling-house within a dwelling-house, and I do not doubt that a closing order can competently close one dwelling-house within a tenement, if it says so, and I think the whole matter is one of identification": *Kirkpatrick* v. *Maxwelltown T.C.* (1912 S.C. (S.) 288; 3 Glen's Loc. Gov. Case Law 157). Further as to this case, see *infra*. But, in another Scottish case: *McDiarmid* v. *Glasgow Housing Committee* (1917, S.C.(S.) 361), an order closing premises therein described as "a dwelling-house," but in fact consisting of eighteen separate tenement dwellings, was held bad, as it purported to close all eighteen until every one had been rendered habitable.

A local authority's inspector of nuisances certified that certain dwelling-houses were unfit for human habitation on the ground that by reason of the proximity of adjacent buildings, there was lack of ventilation, and the local authority made a closing order under a local Act. It was held (1) that the fact that the cause of the unfitness was something extraneous to the houses did not render the order *ultra vires*; and (2) that the fact that the local authority had chosen this remedy, instead of one in respect of which they would have had to pay compensation, did not render the order *mala fide*, *Hall* v. *Manchester Corporation* (1915, H.L., 79 J.P. 385; 13 L.G.R. 1105).

In *Kirkpatrick's Case* above cited, the following further points of law were decided: (*a*) That the owner had been told sufficiently clearly in the medical officer's detailed report why the house was alleged to be closeable; (*b*) that, as the closing order followed the prescribed form exactly, it was not bad, because it did not sufficiently specify the grounds for making it; (*c*) that the local authority were not bound to hear the owner in opposition to the order before making it; and (*d*) that the statutory grounds for making the order, namely, that the premises are "dangerous" or "injurious to health," are not separate grounds, but that the second expression is explanatory of the first.

The "note" at the foot of the prescribed form for the notice of a closing order set out, in 1911, the section of the Act of 1909 (s. 17 (3), now s. 11 (2) of the Act of 1925) which gave the owner a right to appeal against it to the Local Government Board. It was held that the omission of this note invalidated the notice (*Rayner* v. *Stepney Corporation*, L.R. 1911, 2 Ch. 312). This decision was distinguished in *Arlidge's Case* (*ante*, p. 838) where there was no such note to the then prescribed form.

Where a local authority, having failed after diligent enquiries to ascertain the name of the freeholder, caused a sealed copy of a closing order, addressed to "the owner," to be left with a caretaker at the premises, it was held that the service was good and that there was no distinction in the Housing Acts between service of an order and service of notice of an order (*Arlidge* v. *Hampstead B.C.*, L.R. 1916, 1 Ch. 59; 60 SOL. J. 43). Where, however, the local authority admitted that their notices had not been properly served, they were restrained from proceeding further (*Hampton* v. *Milton Regis U.D.C.*, 1915, Neville, J., 79 J.P.Jo. 388). See also *Wright* v. *Prescot U.D.C.*, *post*, under "Appeals."

Notice of a closing order having been served on the occupier (a weekly tenant at a rent of 30s. a week), and the occupier having refused to go, he was forcibly ejected under a warrant of justices. The owner then repaired the cottage and let it to another tenant, after refusing an application by the ejected tenant to be again accepted as tenant. The ejected tenant then forcibly re-took possession and refused to go. It was held that he was a trespasser and not protected by the Rent Act. A contention that a closing order did not impliedly determine tenancies which had not been otherwise lawfully determined was overruled (*Blake* v. *Smith*, L.R. 1921, 2 K.B. 685).

In *Reg.* v. *Slade* (L.R. 1895, 2 Q.B. 247; 39 SOL. J. 625), it was held that a daily penalty for breach of a closing order for a period exceeding six months was bad.

As to closing "back to back" houses, see *White* v. *St. Marylebone Borough Council* (L.R. 1915, 3 K.B. 249). This case will be fully digested in the article dealing with appeals to the Minister of Health. Next week I propose to deal with "demolition" orders.

A Conveyancer's Diary.

Mortgage Costs.

It may be taken as a general rule that a mortgagee is entitled to add to the principal sum secured by his mortgage the costs, not only of preparing the mortgage, but also of protecting and enforcing it.

The effect of the rule laid down in *Heath* v. *Chinn*, 1908, W.N. 120, is as follows:—

(1) A mortgagee is entitled to his costs, as an absolute right, unless he has forfeited them by misconduct.

(2) If he has forfeited his absolute right to them, it is still in the discretion of the court to award them to him.

(3) Misconduct is constituted by sustaining an untenable defence or making a claim after full payment of the mortgage debt, interest and costs.

There are, of course, other forms of misconduct than those mentioned in the above case, including all forms of fraud, attempts to deprive other incumbrancers of the benefits of their securities and other unfair dealing.

A mortgagee is entitled to his costs, not only against his mortgagor, but also against subsequent incumbrances of the mortgagor, and all other persons claiming through the mortgagor other than prior encumbrancers; but it appears from *Re Baldwin*, 1900, 1 Ir.R. 15, that this does not apply to costs incurred by a mortgagee in an action against third parties.

By R.S.C. Ord. 65, r. 1, after providing that all costs incident to proceedings in the Supreme Court shall be in the discretion of the court or the judge, it is further provided that nothing therein contained shall deprive an executor . . . or mortgagee who has not unreasonably instituted or carried on or resisted any proceedings, of any right to costs out of a particular estate or fund to which he would be entitled

according to the rules hitherto acted upon in the Chancery Division.

The right of a mortgagee to his costs arises under the mortgage contract, even though it may not be so expressed. They are not, however, recoverable by action, *Re Sneyd*, 25 Ch. D. 338, but are part of the price of redemption, for equity will not allow a mortgagor to redeem his property until all reasonable claims of the mortgagee have been fully satisfied, and in this practice the court acts on the equitable rule that he who seeks equity must do equity. Perhaps it is as well to add here that, though mortgages are no longer given in the form of an absolute conveyance, the same equitable doctrine still applies to a mortgage by legal charge or by a demise for a term of years absolute.

It seems that the position of an equitable mortgagee in possession of title deeds, accompanied by a memorandum of charge, is the same as that of a legal mortgagee: *Lewis* v. *John*, 9 Sim. 366.

Numerous cases have decided what does and does not constitute improper conduct on the part of a mortgagee, to disentitle him to his costs in redemption and foreclosure actions, and in some cases the costs of all parties to the action have been given against the mortgagee, but this is very rare and only done where the mortgagee's conduct has been grossly improper.

Apart from cases where mortgagees have sustained unfounded defences or prosecuted unreasonable claims, costs have been given against them where their conduct has been vexatious or oppressive; where they have joined unnecessary parties; where they make unfounded allegations of fraud against other parties to an action.

Profit Costs.

Formerly it was the rule that a solicitor mortgagee could not charge profit costs, on the grounds that a mortgagee could not charge for his personal trouble in connexion with the mortgage. This disability was, however, removed by the Mortgagees Legal Costs Act, 1895.

Miscellaneous.

A mortgagee is entitled to taxed party and party costs, of enforcing his security, but, as a rule, without interest, though if costs are directed to be added to his security they will carry interest at the rate of 4 per cent. per annum from the date of the taxing master's certificate, but not from the date of the judgment.

Where solicitors down to a certain date have investigated A's title to land for the purpose of negotiating a mortgage, if subsequently B, though claiming under A, comes to borrow money from a mortgagee acting by the same solicitors who investigated A's title, the solicitors may carry in a bill of costs for the investigation of B's title on the scale provided for in the first part of the First Schedule to the Solicitors' Remuneration Act, 1881: *Re Coward, Chance & Co.*, 1928, 1 Ch. 379. The fact that they have already investigated the title of A to the property does not affect their power to charge "For investigating title to freehold property," &c.

Landlord and Tenant Notebook.

Dwelling-house or Business Premises.

In practice the question is continually cropping up as to whether premises are to be regarded as constituting a dwelling-house on the one hand, or business premises on the other, and whether therefore they are within or without the protection of the Rent Acts.

The Rent Acts themselves provide no guide for determining this question, the material section, i.e., s. 12 (2) of the Increase of Rent and Mortgage Interest Restrictions Act, 1920, providing merely that the Act "shall apply to a house or a part of a house let as a separate dwelling," but the Act is silent as to the tests to be applied in order to determine whether premises are so let as a dwelling-house.

One must therefore turn to the decided cases for the purpose of discovering the answer to the question. Many tests have been laid down, but none of them may be regarded as conclusive.

In one of the earliest cases, viz., *Waller* v. *Thomas*, 1921, 1 K.B. 541, Mr. Justice McCardie considered the true test to be the "Dominant purpose and user" of the premises, but this test was not approved of in the later case of *Cohen* v. *Benjamin*, 38 T.L.R., p. 11.

Having regard to the fact that s. 12 (2) of the Increase of Rent and Mortgage (Restrictions) Act, 1920, speaks of the Act as applying to a house let as a separate dwelling, the test laid down by Swift, J., in *Greig* v. *Francis*, 38 T.L.R. 519, viz., that one must regard the purpose for which the premises were let, would appear to be at any rate one of the material tests which must be applied.

Again, having regard to the fact that it is an essential characteristic of a dwelling-house that it should be used for the purpose of being dwelt in, the fact that it is used for the purpose of being slept in would appear to be an equally material consideration (see *Richmond* v. *Gordon*, 38 T.L.R. 151).

Similarly, the fact that meals are cooked and eaten on the premises appears to be an equally important factor when taken in conjunction with other factors which point to the user of the premises as a dwelling-house.

But the fact of cooking and eating on the premises, when taken by itself, is not sufficient, since a restaurant would clearly be business premises and not a dwelling-house.

Another important factor which might have a bearing on the question is the purpose for which the premises are structurally adapted (*Burns* v. *Radcliffe*, 1923, 2 I.R. 158).

Whatever the structural character of the premises, however, and whatever the use to which the premises have actually been put, it is always important to ascertain what was the use to which the tenant was under the particular lease entitled to put the premises. Thus, if a dwelling-house is let for the purposes of a business, and if there is a covenant by the lessee to carry on a business on the premises and not to use it for any other purpose, then clearly the premises, although structurally a dwelling-house, would constitute business premises and would consequently be outside the protection of the Rent Acts. Conversely, if a landlord chooses to let business premises as a dwelling-house and the tenant chooses to take and use the premises for the purpose of a dwelling-house, then the premises would, notwithstanding their structural character, constitute a dwelling-house, and accordingly be within the Rent Acts.

Thus, in *Barrett* v. *Hardy Brothers (Alnwick) Ltd.*, Scrutton, L.J., points out that "the important matter is the right under the lease, not the *de facto* use of the premises."

(*To be continued.*)

Our County Court Letter.

LIABILITY FOR DAMAGE BY WATER.

The Divisional Court have upheld the judgment of His Honour Judge Parsons, K.C., in *Duck, Son and Pinker, Limited* v. *Anderson's Rubber Co. Limited*. The parties owned neighbouring premises at Bristol, and on a previous complaint by the plaintiffs of the percolation of water, the defendants had employed a plumber who was believed to have stopped the flow. There was a heavy rainstorm five months afterwards, and the plaintiffs' premises suffered an inrush of water, which was found to come from an apparently useless pipe running from a gully on the defendants' premises into the bricks of the plaintiffs' wall. The pipe was choked with a piece of mortar, and, as a result, the water flowed back and was forced through the wall into the plaintiffs' premises. The plaintiffs therefore claimed £19 10s. 8d., as damages for negligence, and, although there was no evidence as to how the pipe came to be in the

gully, the county court judge held that the defendants were under an absolute duty to prevent the flow of water, and that, as they had not discovered the cause on the first occasion, they were liable for negligence. The defendants appealed on the ground that there was no negligence on their first failure, but Mr. Justice SWIFT held that, after the first complaint, there was not sufficient investigation to ascertain the source of the flow, and Mr. Justice ACTON concurred in dismissing the appeal, on the ground that there had been negligence.

It does not follow, however, that a finding of negligence will always render the defendant liable, and as there may be other elements to be taken into consideration, it is important to elicit all the facts. In *Lothian* v. *Rickards*, 1913, A.C. 263, the plaintiff was the tenant of part of the second floor of a building, of which the defendant was lessee, and on the fourth floor there was a lavatory containing a wash-hand basin for the use of tenants of the upper floors. The defendant's caretaker of the whole building went off duty one night, leaving the lavatory in proper order, but next morning the plaintiff found his stock-in-trade of school books seriously damaged by an overflow of water. It was found that the waste pipe in the lavatory had been blocked with nails, penholders, string and soap, and that the water tap had been turned full on and left running for some hours. In an action in Melbourne County Court the jury found (1) that the defendant was negligent in not providing a lead safe to enable an overflow to escape; (2) that the caretaker was not negligent in failing to discover the block in the waste pipe; (3) the amount of damage was £156; (4) that it was caused by the malicious act of some person. Judgment was given for the plaintiffs for the above amount, but the Supreme Court of Victoria reversed this decision, which was upheld by the High Court of Australia. The Privy Council restored the judgment of the Supreme Court of Victoria in favour of the defendant, the lessee of the whole building. Lord MOULTON, in giving judgment, pointed out that the defendant was not liable on the principle of *Rylands* v. *Fletcher*, for damage caused by the wrongful acts of third persons. In having on his premises a proper water supply, he was only using those premises in an ordinary and proper manner, and—although he was bound to exercise all reasonable care—he was not responsible for damage not due to his own default, whether that damage was caused by the wrongful acts of third persons or by inevitable accident.

The test by which the latter can be ascertained was exemplified in *Carstairs* v. *Taylor*, L.R. 6 Ex. 217. The plaintiff hired from the defendant the ground floor of a warehouse, for the purpose of storing rice, and the defendant occupied the upper floor, where he stored cotton. The water from the roof ran along gutters into a wooden box, and from there through a pipe into the drain. The box was examined on the 18th April and found intact, but on the 22nd April a heavy rainstorm occurred, and water leaked through and damaged the plaintiff's rice, it being afterwards found that, at some time in the four days, a rat had gnawed a hole in the box. The plaintiff claimed £90 damages, but was non-suited by Baron MARTIN, at Liverpool Assizes, and the Court of Exchequer upheld the decision. Chief Baron KELLY stated that the plaintiff could not have recovered even if, independently of the relation of landlord and tenant, there had been a duty on the owner and occupier of the upper floors to prevent accidents from ordinary causes to the occupier of the lower floor. The complete performance of any such implied contract or duty would not have guarded against the mischief in question, which is still a source of damage even with modern appliances.

The attention of the Legal Profession is called to the fact that THE PHŒNIX ASSURANCE COMPANY LTD., Phœnix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS), invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at Byron House, 7, St. James's Street, S.W.1; 187, Fleet Street, E.C.4; 20-22, Lincoln's Inn Fields, W.C.2; and throughout the country.

Practice Notes.

LANDLORD'S REMEDIES AGAINST AN INSOLVENT TENANT.

AN interesting point and one extremely important to landlords was taken the other day before the Court of Appeal, sitting in bankruptcy in the case of *In re A Debtor* (72 SOL. J. p. 727). The facts were shortly as follows: The debtor was the tenant of the creditor and had himself sub-let some of the premises. The landlord had obtained judgment against him to an amount considerably in excess of £50 in respect chiefly of rent and as the tenant failed to comply with a bankruptcy notice served on him the landlord proceeded to present a bankruptcy petition. A few days after the presentation of the petition the landlord exercised the powers conferred on him by s. 6 of the Law of Distress Amendment Act, 1908, and served on the debtor's sub-tenants a notice stating the amount of arrears due and requiring all rents to be paid direct to him as superior landlord. In this way he did receive some rents which *pro tanto* reduced the debt owing, but still left it well over £50. The registrar, after several adjournments, finally made a receiving order and the debtor appealed. The point taken by his counsel in the Court of Appeal was one of vital importance to landlords. It was that the landlord, by exercising his powers under s. 6 of the Law of Distress Amendment Act, had precluded himself from making use of bankruptcy proceedings, as he had prevented money from reaching the hands of the debtor and so being available in his bankruptcy; the creditor, it was contended, should not be allowed to harass the debtor under two different modes of procedure, and, as the creditor had elected to proceed under the Act of 1908, all proceedings in the bankruptcy should be stayed. The importance of this point is clear. Under the Act of 1908 the landlord, while precluded from levying distress on the under-tenants' goods, is compensated by being allowed to recover their rents. This is an important right, but if this right could be exercised only at the cost of forfeiting rights under the Bankruptcy Acts, the provisions of the Act of 1908 would be of little or no value to a landlord. However, the Court of Appeal (Lord HANWORTH, M.R., LAWRENCE, RUSSELL, L.JJ.) unanimously refused to accept the arguments of counsel for the appellant, and held that a landlord by proceeding under the Act of 1908 did not thereby affect his right to obtain a receiving order, provided the proceedings which he had taken were in order, and that the debt due was of the required amount. And indeed, it would be difficult to imagine the court holding otherwise. Concurrent remedies exist in every department of our law, and, on the face of it, it would be strange if the landlord was to be the person who was not to exercise them. And while it is true that the landlord by exercising his powers under s. 6 of the Act of 1908 is preventing money from reaching his tenants' hands and so being available in his bankruptcy, yet this is what the legislature has expressly permitted him to do; and it must be remembered that not merely is the landlord empowered legally to intercept rents due to the debtor, but the right of the debtor to receive these rents is transferred to his landlord, and is thereby destroyed. It may be a question as to how far the rights of the landlord may prevail against the rights of the trustee in bankruptcy, but these rights cannot affect the appointment of a receiver. The Bankruptcy Act lays down certain requirements which must be fulfilled before the court may make a receiving order. When the petition is a creditor's petition the only requirement which at present is relevant is that the debt be for at least £50. When that requirement is fulfilled the court has jurisdiction to make the receiving order. The words used in the relevant section are "may" make, not "must" make; but the case of *In re A Debtor*, 1917, 2 K.B. 60, goes a long way towards establishing the proposition that where there is a good petitioning creditor's debt (i.e., where the debt is over £50) the Court *must* make the order.

But even supposing the court has a discretion, it is difficult to see on what principle it could refuse to make an order in favour of a creditor who has done no more than exercise a statutory right.

Correspondence.

Concerning Requisitions on Title.

Sir,—That the hustle and bustle of modern life is creeping slowly into the precincts of legal practitioners is the joy of many City firms. Some indeed are chafing at the slowness of the creeping. A marvel indeed would it be if any profession could exclude from its province the mighty onward march of progress common to all the detail of life around.

There is no reason why any loss of dignity or prestige should result from an adaptation to modern conditions.

The era of the printed precedent, however, has long since arrived, and, of course, was first introduced as a time-saver. Without any wish to invoke the wrath of those who publish these forms, it must be here set down that the printed precedent has given rise to much trouble and has saved but very little time.

Particularly is this the case in regard to requisitions on title. Indeed, ready-made requisitions are now much in vogue, containing barely anything relevant to the title in question, but calmly and in cold print demanding information on every conceivable topic affecting any title in the wide world. The extreme conscientiousness with which legal work is usually conducted is certainly lacking here. The very obvious intention of the compiler of such forms is evidently to provide a sound basis from which the practitioner may select what is relevant to the title being investigated, and so proceed to special matters peculiar to the abstract under review.

A constant irritant to the already tried nerves of the busy modern lawyer are these constantly used irrelevant requisitions.

To take the usual enquiry, "Is the road taken over by the local authority and all charges on account thereof paid?" This invariably appears on the printed form, and yet in most cases of city or town property it is clearly unnecessary.

In the case of a property abutting on the Great West-road, to this historic requisition came the sardonic reply, "Yes, the purchaser's solicitors are referred to the Public Record Office—reference Julius Cæsar"; in another, a transaction dealing with vacant land, to the time-worn request, "Please give particulars of the fire insurance, including name of office," etc., etc., came the reply, "The land is not inflammable"; and yet again to "How is access had to the property?" the answer was, "Through the front door"; and on another occasion, "Recently through the back bedroom window by a marauder, but this method is not countenanced by the vendor."

Then again to "When were the premises last painted (*a*) inside, (*b*) outside?" the reply might have been, "If the purchaser cannot judge for himself by looking, we suggest enquiry be made of all the local painters concerning the period which by the covenant contained in the lease the premises ought so to have been painted last."

It evidently is not realised generally that many common form requisitions can only rightly be made after a general knowledge of the property is acquired. A vendor's solicitor should not be expected to ascertain firstly if there are any wires or aerials for telegraph or wireless purposes merely to enable him to say whether or not the same were erected by permission.

Another frequent source of annoyance to the busy practitioner is the oft-repeated requisition on points raised and disposed of prior to exchange of contract. If satisfactory replies have been furnished at the commencement of the transaction, why should relevant requisitions on title be buried amid a pile of pharisaical innocence?

If ever conveyancers had to *pretend* they were busy, they do not now, and it is the devout wish of many busy persons that one of the New Year resolutions of one and all may be, "We will confine ourselves to relevancies."

Wallington. G. MARSHALL.
16th December.

Radium.

Sir,—May I beg your kind consideration of the appeal of The Cancer Hospital for Radium. The Cancer Hospital was the first institution in this country, and possibly in the world, to try the effects of radium in the treatment of cancer.

Twenty-five years ago, in the autumn of 1903, with the loan of a small quantity of radium, a series of cases in which it was used were carefully studied. The microscopic sections of the treated cancers are still preserved in the Research Institute.

At a later date a small quantity of radium was bought. Small though this supply was, its effects have been carefully studied over a number of years. With increasing experience and with the improvement of the technique of application the medical staff have become so impressed with its usefulness that they have urged the house committee to buy a quantity of three grammes. The house committee cannot see their way to afford this quantity in spite of the urgent appeals of the medical staff, but they have been enabled to purchase one gramme of the element, and this is in constant use in the treatment of patients.

The Memorial Hospital of New York, which is a very similar institution to this, possesses eight grammes, and the experience of American and Continental clinics shows that with anything less than two grammes the useful service of a radium clinic is seriously curtailed. With small quantities the overhead charges are too great.

The Cancer Hospital has in actual operation a well-equipped radio-therapeutic department organised by the late Dr. Robert Knox, and is fully staffed by specially trained workers. The honorary surgeons have had a long experience in the practical treatment of cancer by radium, and the physicist who has charge of the radium is a recognised authority in this substance, and is at the present time engaged in valuable research into its physical properties. The radio-therapeutic department is recognised by the University of London as a teaching school and many of the diplomates in radiology have been trained there.

In the research department two investigators study exclusively the biological effects of radium. For some time past a scheme for making The Cancer Hospital a radium centre for this part of London has been under consideration.

It is respectfully suggested that the provision of two more grammes of radium at The Cancer Hospital would enable the medical staff not only to treat a very much larger number of the cases of cancer that come to us, but would also enable this hospital to supply radium emanation to other hospitals and to other surgeons than those on the staff.

THE CANCER HOSPITAL (FREE),
J. Courtney Buchanan, C.B.E.

The Right to Refuse to Trade.

Sir,—With great respect to your correspondent A.F., it is submitted that *Hurst's Case*, which deals with breach of an existing contract, is immaterial to the question whether a contract is made by the tender of the price at which goods are ticketed. In "Addison on Torts," 7th ed., p. 141, *Timothy* v. *Simpson* is cited for the following proposition: "If a shopkeeper puts goods into his shop window, ticketed at a certain price, he is not bound to sell them at the price marked; and, if a customer insists upon having the goods, and refuses to leave the shop after having been requested so to do by the shopkeeper or his assistants, he may be turned

out." In *Hurst* v. *Picture Theatres, Ltd.*, 1915, 1 K.B. 1, there was a contract which the defendants had broken, their manager acting under a mistaken belief that the plaintiff had not paid for his seat. An offer, to be turned into a contract by acceptance, must be a definite offer to enter into contractual relations: *Harvey* v. *Facey*, 1893, A.C. 552. A bookseller who sends a catalogue, or a wine merchant a price list, does not make offers to sell, but invites offers to buy: see *Grainger and Son* v. *Gough*, 1896, A.C., at p. 334.

South Lodge, Druid Stoke, Nr. Bristol.
15th December.

A. W. PEAKE.

Principal Vesting Deed—Costs—*Q.* 1475.

Sir,—In the case of *Llewellin* v. *Williams*, in dealing with the question of costs, Mr. Justice Stirling, in his judgment said: "It seems to me that if any meaning is to be attached to the words 'incidental to the exercise of any of the powers,' it is that the tenant for life is to have not merely his costs, charges and expenses which directly and necessarily arise out of the exercise of the powers and provisions of the Settled Land Act, *but also those* which, without being a direct or necessary consequence of that exercise, are incurred casually or incidentally in the course of that exercise."

The reference to the above case is vol. 37 of the Chancery Law Reports (1887).

It seems to the writer that the tenant for life is always entitled to be represented by an independent solicitor, if he so pleases.

ALFRED E. GLOVER.

Law Society's Hall,
Chancery Lane, London, W.C.,
13th December.

Reviews.

The Sacco-Vanzetti Case. Transcript of the Record of the Trial of Nicola Sacco and Bartholomeo Vanzetti in the Courts of Massachusetts, and subsequent proceedings. 1920-7. Vols. 1 to 4, Henry Holt & Company, New York.

The Sacco-Vanzetti Case is of world-wide celebrity. Not only is the trial in itself one of very great interest, being of a type which in these days makes "news," but as the years went on in the long protracted agony, it aroused strong feeling, leading to meetings of protest all over the world, demonstrations against American embassies in several capitals, and actual bomb outrages, the futile arguments of the violent.

To English notions, execution six years after conviction (seven after indictment) seems preposterous delay, involving scandal to the public and cruelty to the accused. But we need not enlarge upon the point. The Americans themselves are loud in the denunciations of their own system, and will, no doubt, some day find time to amend it.

One of the features of the case which makes it interesting here is this contrast between Massachusetts and England. We observe with amazement that from a panel of 500 only seven jurors could be drawn through the net of challenges, peremptory and for cause. After that, the selection of the other five from about 200 more "talesmen" must be regarded as good business. It would be terrible to think that out of 700 citizens of the United States 688 could not be entrusted with the duty of doing justice, but this is not so. The selection is only an elaborate game played by the lawyers for the benefit of the gallery. That elaborate game is continued, with enormous waste of time, and considerable friction between bench and bar, in hundreds of "exceptions," mostly futile.

The trial dragged its slow length along. As it began a year after the men were charged, the witnesses, especially as to identity, had but faded recollections of what had happened. Some of them could not even remember what they had said earlier, and a ruthless examination of their doubtful or conflicting statements, as they appear on paper, leaves one dubious about the propriety of a conviction largely based on identification. But those who heard and saw the witnesses judged their testimony sufficient, and the whole matter was reviewed again and again. We must hope the accused suffered rightfully.

The case has already accumulated around it a considerable literature, much of it polemical. A dispassionate article appeared in the American Bar Association Journal for December, 1927, by an eminent Canadian judge, who came to the conclusion that there was a fair trial, with ample evidence upon which a jury might convict. We must leave it here.

The publishers must be congratulated in the production of this full record of the case; the first four volumes run to over 4,000 pages. They demand an immense amount of reading and careful analysis, but do offer an opportunity of discovering some part of the truth of a case wrapped in confusion by uninformed comment and passionate prejudice.

Pension and Superannuation Funds. Their Formation and Administration explained. BERNARD ROBERTSON, F.A.I., and H. SAMUELS, Barrister-at-law. With Foreword by Sir JOSEPH BURN, K.B.E., F.A.I. Demy 8vo. pp. x and 134 (with Bibliography and Index). 1928. Sir Isaac Pitman & Sons, Ltd. 5s. net.

Sir Joseph Burn, in his admirable foreword to this work, strikes a note which will be appreciated by every thoughtful man, be he employer or employed. He says "Old-age provision is no longer a thing which is regarded by the worker on the one hand as beyond his power, and by the employer on the other as lying outside his duty." So many of the larger and more important industrial and business concerns in the country are now developing or considering schemes for thrift and economy that this practical and thoroughly well-written treatise, which deals so fully with the actuarial as well as the legal aspect of the subject, comes at an opportune moment, and should therefore be welcomed both outside and within the business of insurance. Employers' contributions to such schemes are, properly judged, a sound business proposition, and therefore a legitimate charge on the undertaking. We commend the careful study of this excellent work to all who are in any way interested in the establishment of such schemes as a reliable and accurate guide. There is a useful appendix with the appropriate sections of the various statutes, and also a carefully-prepared Index. H.

Books Received.

The Journal of the Auctioneers' and Estate Agents' Institute of the United Kingdom. Vol. VIII. Pt. 12. December, 1928. Issued only to members.

JUDGE'S COMPLAINT OF BAD ENGLISH.

"They or neither of them are liable."

This sentence from a legal document exhibited during the hearing of a case in the King's Bench Division on Monday, was quoted by Mr. Justice Horridge as an example of "really shocking English."

It was quite obvious he said, that the words could not be construed as meaning what they were intended to mean. He suggested that the sentence ought to read: "They are not, nor are either of them liable."

A few moments later, counsel appearing in the case said there was apparently a suggestion against a witness who had produced some accounts that he had "cooked his books."

Mr. Justice Horridge: Do you mean cooked the books or cooked the figures?

Counsel replied that, of course, he meant the figures, and apologised for what he termed his "loose use of words."

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers only are answered gratis. All questions should be typewritten (in duplicate), addressed to—The Assistant Editor, 29, Breams Buildings, E.C.4, and should contain the name and address of the subscriber. In matters of urgency, answers will be forwarded by post if a stamped addressed envelope is enclosed. The Editor accepts no responsibility for the replies given.

Executor—Trusteeship—Power to Appoint Additional Trustees.

Q. 1510. The will of a testatrix, who died in May, 1925, devised her residuary real and personal estate to her husband for life, and then to her sister for life and afterwards to her niece absolutely. The testatrix appointed her husband sole executor, but did not appoint any trustees. The executor has now been advised to have trustees appointed. He has sold all the real estate as "personal representative," and holds the proceeds of sale according to the trusts of the will. Consequently, the trustees who are to be appointed need not expressly be appointed S.L.A. trustees. There is, apparently, no power in the executor as such to appoint trustees as he was not himself appointed a trustee, but in a codicil to the will the testatrix, in confirming the devises of her property, both freehold and leasehold, for the respective lives of her husband and her sister, then for her said niece stated as follows: "I empower my husband during his lifetime, or my said sister after his decease, to sell the said property and to invest the proceeds of any such sale in such securities as they may think fit." It is presumed that the above words are such as sufficiently constitute the husband a *constructive* trustee of the will, and if you are able to confirm that this is so it is presumed that he, as such constructive trustee, has the power to appoint new trustees of the will, and could appoint himself one of such? I shall be glad to have your opinion on the above as early as convenient, and if you do not confirm the suggestion made above what course do you consider is necessary to have trustees appointed?

A. As the husband did not in fact sell under the power, but as personal representative, we do not consider that he is a constructive trustee by virtue of the clause referred to in the question. The proceeds of sale are in his hands upon the trusts of the will, as equity does not ever lack a trustee, and we are of opinion that he can appoint an additional trustee to act with him in respect of his existing trust. In this connexion see T.A., 1925, s. 68 (17).

Extinguishment of Manorial Incidents Tenant's Fixtures included in Sched. A. Assessment Valuation.

Q. 1511. By Scale, Pt. 2, cl. 13 of above Act, compensation is payable for extinguishment of incidents at 20 per cent. of annual value, provided that when, by the custom of the manor, the tenant has an unrestricted right of demising or otherwise dealing with the land, without the licence of the lord, no compensation is payable. By s. 139, Pt. 2, cl. 3, it is provided, in estimating the annual value of the land, no deduction should be made for land tax or landlord's property tax, but the quit rent shall be deducted, and where there are buildings allowance should be made for keeping the buildings in repair. In default of agreement, the gross annual value of the land, if separately assessed for the purposes of Sched. A of the Income Tax Act, shall be used as the basis for ascertaining the annual value. In the manor of K, the copyholds are surrendered and admittance taken by court roll, and a nominal fine on alienation is paid, and the steward's fees on admittance. The property in question is let to a tenant at £20 a year. The tenant erects a number of wooden horse boxes fixed to the freehold, but which are tenants' fixtures, and he is entitled to remove on termination of his tenancy. The property is assessed to poor rate on a gross estimated rental of £60, the tenants' fixtures having been considered in arriving at this assessment. The assessor of taxes has adapted this gross poor rate for assessment to property tax, allowing the usual deductions for repairs, leaving the net assessment at £50. The landlord objects to pay or allow the tenant the property tax on any assessment above the annual rent. The assessor is, therefore, assessing the tenant on the excess or on the annual value of the fixtures. The lord of the manor claims one-fifth of the full gross assessment of £60 as compensation for extinguishment of manorial incidents. No allowance is made by him off the gross value for keeping the buildings in repair, as provided in cl. 3, s. 139 of the Act. Please give your opinion: (1) Is the lord of the manor entitled to have his compensation on the full amount of £60 as stated? (2) Is the assessor of taxes entitled to make the above assessment on the tenant in respect of his fixtures, and, if so, is the tenant entitled to repayment from the landlord or to deduct the amount from his rent?

A. (1) Application may be made to the Minister under s. 139 (1) (viii) and 13th Sched., Pt. II, para. 3, and the Manorial Incidents Extinguishment Rules, 1925, 64 (3) (all in the same terms) to determine that under the circumstances the adoption of Sched. A would work injustice to the tenant (of the manor). Unless the Minister exercises his powers (as it is thought he might do under the circumstances) it seems that the tenant is bound by Sched. A. It is not clear, however, whether, if a valuer is appointed at the instance of either party he can disregard Sched. A. The latter point is, it is believed, still undecided. It is assumed, of course, that a custom to demise for an unlimited term cannot be proved. (2) The assessment to Sched. A is properly made to include buildings erected by the occupier, but the occupier can only deduct tax on the amount of his rent. Income Tax Act, 1918, Sched. A, No. VIII, r. 1.

Legal Mortgage Held in Trust Whether Mortgagee's Term Transferred by Effect of Sched. I, Pt. II, L.P.A., 1925.

Q. 1512. A.B., by his will, appointed his wife C.D. to be his sole executrix, and appointed C.D. and his four children trustees. Testator died in January, 1914, possessed of certain mortgages on freehold property. C.D. duly proved the will, and it is agreed that the administration is now at an end. C.D. died in September, 1927, without having executed any transfer of the mortgages to the trustees. A transfer of one of the mortgages to an independent mortgagee is now taking place, and the mortgagor's solicitors contend that the proper persons to transfer are the trustees of A.B., and rely on para. 6 (*d*) of Pt. II of the 1st Sched. of the L.P.A., 1925, whereas the mortgagees' solicitors contend that the personal representatives of C.D. are the proper persons, and maintain that although the trustees were entitled to call for a transfer to them yet until such transfer is executed the legal estate still remains in C.D.'s representatives. Who, in your opinion, are the proper persons to execute the transfer?

A. It is assumed from the question that the will bequeathed the mortgages, or the testator's estate, including the mortgages, to the trustees, and that the administration was completed before 1st January, 1926. It can hardly be supposed that the draftsman of the Act had in contemplation the transfer of the mortgagees' estates when the money was still owing. The transitional provisions referred to are governed by s. 39, the material words of the section being

" for getting in outstanding legal estates." This is not a case of an outstanding legal estate. If, after the fee simple estate of the mortgagee was converted under Pt. VII into a term of years, the effect of paras. 3 and 6 of Pt. II was to vest the term in the person entitled to the mortgage, the term would be vested in one person, and the debt in another. Under the circumstances therefore, it is advised that the proper persons to transfer are the personal representatives of C.D., but as the surviving trustees claim to be entitled to the money they may be asked to concur to receive it by the direction of the personal representatives.

Puisne Mortgage—What Constitutes Deposit of Documents.

Q. 1513. (1) Prior to 1st January, 1926, A and B entitled to land as tenants in common in fee simple in equal shares, mortgaged the land to C, and proceeded to erect houses thereon. During 1926 A and B borrowed further money from C upon three further charges.

(2) In 1927 A and B entered into a deed of partition of the land and the houses then erected thereon, A taking one part of the land with the houses thereon subject to the mortgages thereon, to C, and B taking the other part subject to the mortgages thereon to C.

(3) C being desirous of having some of his money repaid by A, the latter is arranging separate mortgages upon separate blocks of houses, and in order to carry out the arrangement C has executed a release from his mortgage and further charges of the property to be re-mortgaged, and A has executed a new mortgage by demise, and has handed to the new mortgagee (1) an abstract of A's title down to and including the deed of partition; (2) the deed of release of the particular property re-mortgaged; and (3) the new mortgage. The partition deed is retained by A as relating to other property.

Is it necessary to register the new mortgage under the Land Charges Act, 1925? It has been suggested on the part of the mortgagor that the release is a material document of title, and that registration is not necessary, but the release is only a release of the mortgage term.

A. In the absence of any direct authority on the point, the opinion is given that the new mortgagee should treat the mortgage as one *not* " protected by a deposit of documents relating to the legal estate affected " under s. 10, class C (1), L.C.A., 1925, and accordingly should register the mortgage.

Undivided Share Subject to Incumbrance—Devise to Co-owner—Title.

Q. 1514. A and B, immediately prior to 1926, held a freehold property in fee simple as tenants in common, A being entitled to two-thirds shares and B to one-third share. B's share was subject to an equitable mortgage. In January, 1927, B died, having by his will devised all his share or interest in the said property to A absolutely. A died in April, 1928, having by his will appointed X and Y executors and trustees, and he directed that the said property be sold and the proceeds divided equally between C, D and E. Y renounced. X has entered into a contract, and is selling as personal representative of A. It is submitted that on 1st January, 1926, the property vested in the Public Trustee by virtue of para. 1 (iii) Pt. IV, of the L.P.A., 1925. If this is so, who should make title? Should X appoint C, D and E trustees, and then X, C, D and E convey as trustees?

A. The assumption that the property vested in the Public Trustee is correct. X can, with the consent of the incumbrancer of B's share, appoint either C, D, E, or other persons, including himself, as trustees (*Re Cliff*, 1927, 2 Ch. 94). If representation was taken out to B's estate it is suggested that his representative (if no formal assent has been given) should join in the appointment, though this is not strictly necessary.

Notes of Cases.

Court of Appeal.

***In re* A Debtor.**

Lord Hanworth, M.R., Greer and Russell, L.JJ.

9th November.

Bankruptcy—Admission by Debtor of Lack of Means—Act of Bankruptcy—Intention to give Notice—Bankruptcy Act, 1914, 4 & 5 Geo. 5, c. 59, s. 1, sub-s. (1) (*h*).

A debtor, who owed some £5,000 to creditors in England, informed a person acting for those creditors that he also owed some £26,000 in Switzerland, where bankruptcy proceedings had been begun, that he intended to offer his Swiss creditors all the money he had, a sum of £1,000, and that he expected to be able to pay his English creditors about 5s. in the £1, spread over a period of years. The creditors presented a petition, under s. 1 (1) (*h*), of the Bankruptcy Act, 1914, which declares that an act of bankruptcy has been committed: " If the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of any of his debts." A receiving order having been made by the registrar, the debtor appealed against the order, contending that the statement he had made was a mere discussion of his affairs, and not a " notice " to his creditors. Further, that as bankruptcy proceedings had begun in Switzerland, the proceedings in England should be stayed.

Lord Hanworth, M.R., said that in *In re Reis*, 1904, 2 K.B. 769, Stirling, L.J., had laid it down that a mere declaration of inability to pay was not enough. There must be a notice that there was an intention to suspend payment. In the present case, the statements made clearly amounted to such a notice. In regard to the concurrent proceedings in Switzerland, as the debtor was in England, as there were debts in England, and as the jurisdiction was not disputed, it seemed that the registrar had jurisdiction to make the order and was also justified in making it. The effect of the bankruptcy proceedings in Switzerland could be considered from time to time as the proceedings here proceeded, and a stay here ordered if advisable.

Greer, L.J., and Russell, L.J., agreed.

Counsel: *Clayton*, K.C., and *Oscar Kean*, for the appellant; *W. N. Stable*, for the respondent.

Solicitors: *Denton, Hall & Burgin; Herbert Oppenheimer, Nathan & Vandyk.*

[Reported by G. T. Whitfield-Hayes, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Coles *v.* White City (Manchester (Greyhound Association Limited.

Eve, J. 5th December.

Company—Prospectus—Non-disclosure of Land Charge—Town Planning Scheme—Rectification of Register.

This action was brought to obtain the rescission of a contract to take shares in the White City (Manchester) Greyhound Association on the ground that there was no disclosure in the prospectus of the company of the fact that the ground on which the company proposed to carry on greyhound racing was within an area scheduled to a town planning resolution which had been registered as a land charge, and that no compensation for the possible removal of the company's buildings could be obtained. The company was incorporated in November, 1927, with a capital of £172,500, to acquire certain freehold premises for the purpose of running greyhound races. The plaintiff received a prospectus and applied for shares, paying certain sums and further sums on allotment. The plaintiff alleged that she was induced to take shares by non-disclosure of material facts, namely, that the site was scheduled for a town planning scheme, and that, unless the permission of the local

authority was obtained before any buildings were erected, no compensation for their removal could be obtained by the company, and that such permission had not been obtained.

EVE, J., said the plaintiff sought to have the share register of the company rectified by expunging her name therefrom. The existence of the town planning scheme introduced an element of risk affecting the whole of the contemplated expenditure in development and equipment, and that risk was the uncertainty whether the local authority would give its consent. By January, 1928, however, that uncertainty was removed by the refusal of consent, and thereupon the carrying out of the original object involved a speculative employment of the company's capital, to which an allottee could not be compelled to assent. He thought it was open to any such shareholder to repudiate his contract and to call on the company to rectify the register and repay him his money. The case was not one on which the decision in *Re Forsey and Hollebone's Contract*, 1927, 2 Ch. 379, had any bearing, or to which s. 198 of the Law of Property Act, 1925, had any application, the plaintiff being invited to enter into a contract of joint adventure in a commercial undertaking and being in no sense a purchaser of the land. She was entitled to the relief claimed and costs.

COUNSEL: *Gordon Alchin* and *Stafford Byers*; *Cave*, K.C., and *L. Tillard*.

SOLICITORS: *Roche, Son & Neale*; *C. Butcher & Simon Burns*.

[Reported by S. E WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Rex *v.* Justices of Ely, *ex parte* Mann.

Lord Hewart, C.J., Avory, J., Acton, J. 14th November.

COSTS—PRIVATE PROSECUTION—QUARTER SESSIONS—JURISDICTION OF JUSTICES—COSTS IN CRIMINAL CASES ACT, 1908, 8 Edw. 7, c. 15, s. 1, sub-ss. (1) (2).

Rule *nisi* for mandamus commanding the justices of Ely to make an order directing the payment of the costs of a private prosecution out of the county funds. The accused, who was caught stealing a pair of boots, was arrested, taken to the police station, and when brought before the local justices elected to be tried by a jury and was committed to quarter sessions. After the arrest the owner of the boots signed an information and the prosecution was conducted as a private one by him, and he retained the clerk to the local justices as solicitor for the prosecution. The prisoner was convicted, but it later appeared that the costs of the prosecution were not allowed. The question for the court was whether the justices were entitled to come to the conclusion to which they did come in not allowing costs.

Lord HEWART, C.J., commenting on the fact that the solicitor for the prosecution was the clerk to the committing justices, cited the words of Lord Coleridge, who said that it was a highly undesirable practice. In some cases a private prosecution was not only necessary but desirable, but in the present case, having regard to the superfluous laying of an information after arrest, and to the fact that the prosecuting solicitor at quarter sessions was clerk to the committing justices, he was of opinion that the justices had materials on which they were entitled to say that in that private prosecution they did not intend to allow costs. The rule must be discharged.

AVORY, J., and ACTON, J., agreed.

COUNSEL: *Schiller*, K.C., and *Watson* showed cause; *Roland Oliver*, K.C., and *A. H. Armstrong* supported the rule.

SOLICITORS: *Withers, Benson & Co.*, for *G. Pettefar*, Wisbech; *Speechly, Mumford & Craig*, for *Peed & Bowker*, Whittlesey.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Griffin *v.* Grey Coaches Limited and Another.

Lord Hewart, C.J., Avory, J., Acton, J. 16th November.

LOCAL GOVERNMENT—MOTOR-COACH—PLYING FOR HIRE—WITHIN COUNTY BOROUGH OF BRIGHTON—UNLICENSED—TOWN POLICE CLAUSES ACT, 1847, 10 & 11 Vict. c. 89, s. 47.

The respondents in this case, Grey Coaches, Ltd., were owners of motor-coaches which ran on a daily London to Brighton service. They advertised these runs on placards outside the garage from which the motor-coaches started, and tickets had to be purchased not later than ten minutes before the coach started. No money was collected on board. On the 10th April 1928, two police sergeants bought tickets in Brighton on the above conditions and on arrival in London informed the driver who they were and told him that he would be reported for driving for hire an unlicensed coach within the prescribed distance of the County Borough of Brighton, and an information was preferred against the owners. Before the justices they contended that as there had been no waiting for passengers by the motor-coach, but an antecedent contract in each case, there had been no plying for hire within the limits of the district or within the meaning of s. 47 of the Town Police Clauses Act, 1847. The justices dismissed the summonses, holding that there had been antecedent contracts of carriage and no plying for hire. This decision was now appealed against.

Lord HEWART, C.J., allowing the appeal, held that the case was not helped by *Sales* v. *Lake*, 66 Sol. J., 453; 1922, 1 K.B. 553, but that the judgment in *Leonard* v. *Western Services, Ltd.*, was very applicable to the facts of this case. The proceedings here were under s. 45 of the Town Police Clauses Act, 1847, and the necessity for plying for hire "in a public street" was absent. In his opinion, on the facts of the case, all the elements were present which constituted a plying for hire. Appeal allowed.

AVORY, J., and ACTON, J., delivered judgments to the same effect.

COUNSEL: *Montgomery*, K.C., and *Raymond Jennings*, for the appellant; *Serjeant Sullivan*, K.C., and *Martin O'Connor*, for the respondents.

SOLICITORS: *Sharpe, Pritchard & Co.*, for the Town Clerk, Brighton; *Edmond O'Connor & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Obituary.

SIR JOHN JAMES GRAHAM, K.C.M.G.

Sir John James Graham, a former secretary to the Law Department, Cape of Good Hope, has died at Cape Town at the age of eighty-one years. Born at Wynberg, he was the eldest son of Mr. Robert Graham, of Fintry, the fourteenth of the line, a direct descendant of Graham of Claverhouse, from whom probably he derived his power of unremitting toil and self-denial.

MR. W. M. WILKINSON.

Mr. William Musgrave Wilkinson, a well-known Yorkshire solicitor, died on Monday last at his residence, "Brecondene," Leeds, in his seventieth year, the result of a recent chill. Educated at Skipton Grammar School and Cheltenham College, he was articled to the late Mr. Latimer and admitted in 1882. In the following year he commenced practice in Leeds, and has carried on the business alone since that time. He devoted, however, considerable attention to public affairs. Mr. Wilkinson was a member of the Leeds Board of Guardians for many years (having previously served for some time as an overseer of the poor), and for two years presided over the deliberations of the board as its chairman. Upon the amalgamation of the Leeds Unions he was elected chairman of the committee constituted under the Rating and Valuation

Act, 1925, and upon the important work of preparing a new valuation of all properties in that area for rating purposes, he brought to bear not only his wide legal knowledge and experience but that shrewd common sense and judgment which is so invaluable in work of that nature. His only son fell in the Great War. H.

In Parliament.

Bills.

HOUSE OF LORDS.

Imperial Telegraphs Bill. Read a first time. 11th December.

Architects Registration Bill [H.L.]. Read a third time. 11th December.

Law of Property (Amendment) Bill. Read a first time. 12th December.

Motor Vehicles Regulation Bill [H.L.]. Read a second time. 12th December.

Expiring Laws Continuance Bill. Read a third time. 12th December.

Electricity Supply Bill. Read a third time and passed. 18th December.

Appellate Jurisdiction Bill. Read a first time. 18th December.

Protection of Animals (Amendment) Bill [H.L.]. Adjourned debate put off to the first sitting day after the recess. 18th December.

Preservation of Infant Life Bill [H.L.]. Read a third time and passed. 18th December.

Mock Auctions Bill [H.L.]. Committed to a Select Committee. 18th December.

HOUSE OF COMMONS.

Crown Proceedings Bill. Read a first time. 12th December

Road Transport (First Aid Equipment) Bill. Read a first time. 18th December.

Parliament Square and Other Streets Bill (as amended). Re-committed to Committee of the whole House. 18th December.

Questions to Ministers.

INCOME TAX (SOLICITORS, DUTIES).

Mr. ELLIS DAVIES asked the Chancellor of the Exchequer whether, in view of the fact that it is illegal for a solicitor to disclose his client's affairs without the latter's consent, he will cause to be discontinued the service of notices on solicitors by income tax authorities to divulge such information?

Mr. SAMUEL: I would refer the hon. Member to the reply which was given to the hon. and gallant Member for the Everton Division of Liverpool (Colonel Woodcock) on 29th November. I am sending him a copy of that reply. I may add that the hon. Member is under a misapprehension in suggesting that it can be illegal for a solicitor to carry out a duty imposed upon him by statute.

SPECIAL LICENSING PERMITS, LONDON.

Mr. JOHNSTON asked the Home Secretary whether his attention has been called to the number of special licensing permits granted in the Metropolitan Police area; whether he is aware that some establishments are almost regularly in receipt of special permits extending the licensing hours; and whether he will consider the advisability of making regulations which will bring the issue of these permits within the official cognisance of the licensing justices?

Sir W. JOYNSON-HICKS: The answer to the first two paragraphs of the question is in the affirmative. It is a difficult matter to which I pay constant attention. As regards the third part of the question, I have no power to make regulations in this matter. If a change in the powers is to come about it will need legislation.

CHARITABLE LOTTERIES.

Commander BELLAIRS asked the Home Secretary whether the Government will consider the question of issuing licences for lotteries in aid of hospitals, charities, etc., in view of the differences of police action in various parts of the country since various decisions in the High Court as to Lottery, Gaming, and Betting Acts?

Sir W. JOYNSON-HICKS: All public lotteries are unlawful, whether for charity or otherwise, and I have no authority to grant exemption from the law. This would require fresh legislation.

Commander BELLAIRS: My question asked whether the Government will consider legislation; and will the right hon. Gentleman bear in mind that the advent of the betting duty, recognising betting, almost compels the Government to legislate on this matter?

Sir W. JOYNSON-HICKS: It is one of the matters I am considering very seriously.

TELEPHONE FACILITIES.

Viscount SANDON asked the Postmaster-General whether he is experimenting with, and will adopt, some means analogous to those initiated in Germany for the purpose of making possible telephonic conversation between a number of people together speaking from different places?

Sir W. MITCHELL-THOMSON: The telephone facilities to which my noble Friend refers are already available in this country.

STAMP DUTIES (VOUCHERS).

Mr. DAY asked the Financial Secretary to the Treasury whether, in view of the uncertainty which at present exists in the mind of the public as to the necessity of putting a twopenny stamp on vouchers that are issued in acknowledgment of payment of amounts over £2, he will state the manner in which the Treasury discriminate between an ordinary receipt and a voucher given in acknowledgment of payment?

Mr. SAMUEL: A voucher given in acknowledgment of payment is a receipt and, if given in respect of a payment of £2 or more, is required to be stamped. The vouchers which do not require to be stamped as receipts are such vouchers as are commonly given in large shops when goods are sold and paid for over the counter. These vouchers are not given in acknowledgment of payment and are more in the nature of an accounting convenience to the shop. They are in the form of invoices, merely giving particulars of the goods purchased; they are given to the customer at the time of ordering goods and do not bear any words importing the receipt of money.

STREET ACCIDENTS (CHILDREN).

Mr. DAY asked the Home Secretary the number of street accidents to children for the twelve months ended to the last convenient date?

Sir V. HENDERSON: I can give only the figures for London (Metropolitan Police District and City of London). The figures for the twelve months to 30th September last are—killed 238, and injured 10,877.

Societies.

Solicitors' Managing Clerks' Association.

FESTIVAL DINNER.

The twenty-third festival dinner of the Solicitors' Managing Clerks' Association was held at the Hotel Great Central on Thursday, the 29th ult., the chair being occupied by Mr. F. D. Hammond (the President). Among the guests were Lord Hailsham (Lord Chancellor), Mr. Justice Eve, Mr. Justice McCardie, Sir Thomas Inskip, K.C., M.P. (Attorney-General), Sir Claude Schuster, K.C., Mr. Malcolm Hilbery, K.C., Mr. C. A. Bennett, K.C., Mr. J. Arthur Barratt, K.C., Mr. W. A. Greene, K.C., Mr. Norman Birkett, K.C., Master Sir Charles Hubert, Master Valentine Ball, O.B.E., Mr. C. R. Romer, Mr. Alfred Adams, Mr. Roger W. Turnbull, Mr. Roger Campbell, Mr. C. R. Havers, Mr. J. Stewart Wallace, Mr. Robert Peel, Mr. Ronald Roxburgh, Mr. F. R. Marcy, Mr. H. S. T. Buckmaster, Mr. F. R. Evershed, Mr. F. McMullan, Mr. J. B. Lindon, Mr. W. F. Waite, Mr. T. M. Pritchard, Mr. H. L. Simmonds, Mr. Tindale Davis, Mr. Guest Matthews, Mr. M. L. Gedge, Mr. Philip Voss, Mr. E. W. Winterbotham, and Mr. Wilfrid Dell (Registrar, Mayor's and City of London Court).

The LORD CHANCELLOR said that he probably had one unique qualification not possessed by any of his predecessors in that he had at one time acted as a managing clerk. That was about thirty-seven years ago, and the experience he had then gained had taught him the high qualities which the managing clerk must possess. Unfortunately, not having been a managing clerk for ten years, he was not qualified to become a member of that noble Association. He had read the report of the activities of the Association during the past year and he found that it had been energetic both in educational and in social life. He read how a series of lectures had been arranged on the Law of Property Act, 1925, that great measure which his predecessor had handed down for the full enjoyment of Chancery practitioners, and he found that the

common law branch of practice had not been neglected, inasmuch as the Association had been entertained with a series of lectures on that most fascinating subject, Order 14, than which there was no topic that was more interesting. He found that the Association had a library. Then he found that among its social activities, at the last annual festival there was present a wealth of legal talent and a great assembly of over 400 guests. That night he saw around him the most distinguished ornaments of the Bench and the Bar and of the solicitor branch of the profession. He did not think it was always borne in mind how unsteadily the legal machine would work if the managing clerk was not there to see to its being in proper order. They heard the deadly cross-examination of various members of the Bar, but no one was told of the patient labour on which the material had been gathered which made that cross-examination possible. He remembered hearing a very experienced leader say that the winning or losing of a case often depended upon the way in which the managing clerk prepared the matter for the cross-examination. If the value of the work done by the managing clerk was so great, then what importance must attach to an association like the Solicitors' Managing Clerks' Association. The Bench and the Bar could meet in the halls of their respective Inns, the solicitors had The Law Society, and there was real need, he thought, of an association where the managing clerks could meet as friends and not as opponents, and so obtain a knowledge of one another and a friendship with one another. He was quite sure that the Association was conferring a real benefit on the profession. He knew that his colleagues of the Bench and the Bar who had been privileged to attend at these annual banquets of the Association felt that they were mostly with old friends and collaborators in many a hard-fought fight. He knew that they, like himself, felt real gratitude for their help, and he knew that with full hearts they would all join with him in drinking the toast and wishing long life and prosperity to the Association.

The PRESIDENT replied. He observed that the Association was born thirty-six years ago, when an attempt was made to prevent managing clerks from having audience in chambers. During the last few years it had obtained incorporation, and although it maintained its old name it was now a new corporate body. Its fundamental object had always been to protect and assist the managing clerk, and, in furtherance of that object, a series of lectures was given for the advancement and education of its members. These were held in the halls of the various Inns of Court, and they were given by barristers and presided over by judges of the High Court. The Association also carried on classes, having the use of one of the courts of the Royal Courts of Justice for the purpose. These classes were for the education of junior law clerks and were presided over by members of the Association. Over 100 students were attending the classes week by week, and it was very creditable that 100 young men could be found who were willing to do so after a hard day's work. The Association had been built up by the exertions of individual members, and he believed it had won the confidence of the Bench and of the Bar.

Mr. NORMAN BIRKETT, K.C., proposed the toast "His Majesty's Judges," speaking of the courtesy and consideration which always marked their proceedings, and the public confidence which existed in their integrity, courage and justice. It was a matter of the most profound consequence that in this country, which had so much to do with shaping the destinies of the entire Empire and the world, there should be that public confidence in the administration of justice.

Mr. Justice EVE responded for the Bench, observing that he had been for a considerable time the senior judge in the Law Courts. That in another thirteen days' time he would have completed twenty-one years' service. He had reached an age when, in the opinion of some persons, he was only qualified for the scrap heap. But he had not the slightest intention of acting upon that opinion, for, frankly, he had no wish to be divorced from the work of the position he occupied. Year after year he and his colleagues were attracted to that banquet largely for the purpose of showing how heartily they recognised the constant aid which the members of the Association afforded to them in their daily work. The finest mechanism that was ever invented would quickly work itself to a standstill but for the unassuming efforts of those who fed and oiled it, and to whose hands was committed the duty of securing the smoothness of its running. And it was no exaggeration to say that the judiciary would cease to function if the loyal and invaluable help of solicitors' managing clerks were withdrawn from it.

Mr. G. E. DENTON (Hon. Secretary) proposed the toast, "Our Guests."

Mr. Justice MCCARDIE returned thanks. He said that those present were gathered together because they recognised their great brotherhood. There were many ranks in the profession, but he felt there was a golden bond of kindness, a common bond of interest, running throughout. All of those present followed the same calling. The older he became the more he felt that there was between them all a golden bond of common, civic and national life. They were each and all chilled by the same frosts, warmed by the same sun, cheered by the same hope. Of the Lord Chancellors, as one looked down the avenues of the centuries, he did not think there had ever been a Lord Chancellor in our history who had held so firmly the affection and the admiration of the people as did the present occupier of the office. We were living in an age of tumult and of change. We were stepping out of the nineteenth century into the fuller life of the twentieth. Every institution would be tested, every institution would have to justify itself in the face of the nation and of the world, and the law would not be exempt from enquiry and from challenge. Let each one so realise the great calling that he followed, let each one hold himself high and cherish the duty of courtesy, kindliness and goodwill, remembering that the whole fabric of the law of the country depended not only on the Bench and on the Bar, not only on the solicitor branch of the profession, but also upon the managing committees who did their work loyally day by day.

Master VALENTINE BALL, O.B.E., submitted the toast "The Ladies."

Mr. WILFRID A. GREENE, K.C., returned thanks.

Mr. E. ERNEST WINTERBOTHAM, giving the toast of "The Legal Profession," observed that the health of the legal profession could only be secured if it rested on the individual loyalty of the members of the profession and those who gave effect to the work.

THE ATTORNEY-GENERAL, in returning thanks, said the profession was one that they all loved, it was a profession of most generous moods, a profession in which they learned many lessons and mutual consideration and admirable self restraint. It was unique in one respect, that the love of contest, the love of battle, was half the pleasure of the game. It was a noble and generous profession, gathering its members in a bond and brotherhood which strengthened the ties of affection.

The final toast was "The Chairman," proposed by Mr. FRANK SMITH and acknowledged by Mr. W. F. GILLHAM, Mr. Hammond having been compelled to leave the hall owing to ill-health.

The Incorporated Law Society of Liverpool.

ANNUAL MEETING.

The 101st annual general meeting of this Society was held at the Law Library, Liverpool, on Wednesday, the 28th ult., the President (Mr. W. H. T. Brown) in the chair. We have pleasure in giving the following extracts from the presidential address:

Poor Persons Procedure.—I appeal to those practising solicitors in Liverpool and district who are not already on the rota to assist us in this work. It is a duty which solicitors, as a body, have undertaken in order to help those who, by reason of want of means, are unable to pay for the conduct of litigation, and it is not sportsmanlike for solicitors to abstain from going on the rota, thus placing an undue burden on those (a small percentage of the whole) who at present undertake the work. It is the obligation of every member of the profession to take his part and thus to ensure:

> That no claim, thro' poverty alone,
> Shall go unpleaded!
> No wrong remain unrighted!

I call attention to a Supreme Court rule which has been made recently, abolishing the fee previously charged for a certified copy of the decree absolute.

Solicitors' Clerks Pension Scheme.—The suggestion is that a scheme should be adopted providing for a pension to clerks at the age of sixty-five, on the following conditions:—

(*a*) An annual contribution in equal sums from employer and employee, which sums can be commuted in whole or in part by a lump sum payment.

(*b*) The pension to be payable for three years if the clerk does not live for that period after attaining sixty-five.

(*c*) Should the clerk die before attaining sixty-five his contributions are to be repaid with 3 per cent. compound interest.

(*d*) The scheme will involve a trust deed and rules. The trust deed will be made between a committee of management consisting of employers and clerks and trustees representing employers and clerks.

The scheme was advocated by a very excellent paper read at the provincial meeting of The Law Society recently held at Eastbourne. It was pointed out:—

(*a*) That the solicitors' clerk deserves a larger pension than that provided by the State.

(*b*) That, although wages in all employments, including the salaries of solicitors' clerks, have increased since the war, the cost of living is still high.

(*c*) That the higher standard of living makes saving difficult, if not impossible.

(*d*) That the contributory scheme by employer and employee would encourage thrift, give to the employee a contractural right to the pension, insure him against want in his old age, and would insure the employer against pensioning off, out of his own pocket, an old and worthy employee, no longer able, through age or infirmity, to make ample provision for himself, and it would create goodwill between employer and employee.

There is much to be said for a full consideration of the scheme. The busy practitioner must necessarily rely upon the efficiency of his staff in performing much of the responsible detail work connected with his practice, and it would give a feeling of security to a clerk to know that, with approaching old age, he is spared the anxiety, which now must often exist, as to how the remaining years of a hitherto strenuous life are to be faced, when he can no longer expect to perform efficiently the duties for which he has hitherto received an annual payment.

It has been pointed out that it is important to observe that such a scheme can only be successful if accepted by the *whole* profession.

The full details will, in due course, be brought before your committee and the other provincial societies, and will be communicated to the profession generally for full consideration. I would, respectfully, advocate the matter being viewed with an open mind pending a due consideration of the details.

Procedure against Crown Departments.—It is very unfortunate that the reform in this procedure has been dropped, at any rate for the present. The objects of a proposed Bill were to assimilate the procedure between the Crown and the subject, and to abolish the unsatisfactory procedure by petition of right.

It was also proposed to authorise proceedings in small cases against the Crown in the county court.

Amongst other things, it sought to render the Crown liable for torts and for payment of costs, in the same manner as other litigants. It also required discovery of documents subject to certain safeguards.

An important letter over the signatures of the chairman of the Bar Council and the then President of the Law Society appeared in *The Times* of the 5th July, 1928, which outlined the proposed alterations in the law, and stated :—

"If Members of the two Houses of Parliament and the general public appreciated the importance of this matter, no further time would be lost in bringing about a reform of the law."

The letter added :—

"We have, however, misgivings as to whether it will be brought forward unless it be strongly supported by public opinion."

There is also a letter from the same source in *The Times* of 2nd November, calling attention to questions which had been raised in the House of Commons and to the ministerial answer—that the subject was "controversial." The letter pressed for a Bill to be introduced, when the nature of the "controversial" matters could be ascertained and discussed.

Before formally moving the adoption of the report I must thank the officers and committee, and especially Mr. L. S. Holmes, our Hon. Secretary, and Mr. G. A. Richards, his efficient Assistant Secretary, for the ever-ready help and assistance they have given me during my term of office, thereby rendering my task an easy and happy one, and I tender them my sincere thanks. (Applause).

PRUDENTIAL ASSURANCE CO.

Mr. A. E. PRATT, senior solicitor to the Prudential Assurance Co. Limited, and solicitor to the Prudential Approved Societies, retires at the end of the year under the Company's superannuation scheme. Mr. Pratt was admitted in 1890.

ORIGINAL DOCUMENTS IN COURT.

During the hearing of a case in the Commercial Court, on Monday, the facts of which were not of general interest, Mr. Justice Wright complained that documents put in were copies only and not originals, and that the originals had not been brought to the court. He said that he wished it to be particularly understood that in cases before him the originals must always be available in court for reference if required.

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac a speciality.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 10th January, 1929.

	Middle Price 18th Dec.	Interest Yield.			Yield with Redemption.		
		£	s.	d.	£	s.	d.
English Government Securities.							
Consols 4% 1957 or after	88¼	4	11	0	—		
Consols 2½%	56	4	9	0	—		
War Loan 5% 1929-47	102⅛	4	18	0	4	17	6
War Loan 4½% 1925-45	98½	4	12	0	4	14	0
War Loan 4% (Tax free) 1929-42	100¾	4	0	0	3	19	6
Funding 4% Loan 1960-1990	90	4	9	0	4	11	0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	94¾	4	4	6	4	7	6
Conversion 4½% Loan 1940-44	99	4	11	0	4	13	0
Conversion 3½% Loan 1961	79	4	8	0	—		
Local Loans 3% Stock 1921 or after	65	4	12	0	—		
Bank Stock	260	4	11	6	—		
India 4½% 1950-55	92½	4	17	0	4	19	6
India 3½%	70½	5	0	0	—		
India 3%	60½	5	0	0	—		
Sudan 4½% 1939-73	97	4	13	0	4	15	0
Sudan 4% 1974	87	4	12	0	4	17	0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years)	83	3	13	0	4	8	0
Colonial Securities.							
Canada 3% 1938	86	3	10	0	4	16	0
Cape of Good Hope 4% 1916-36	94	4	5	0	4	19	6
Cape of Good Hope 3½% 1929-49	82	4	5	6	4	18	6
Commonwealth of Australia 5% 1945-75	98	4	18	0	5	2	0
Gold Coast 4½% 1956	96xd	4	14	0	4	17	6
Jamaica 4½% 1941-71	96	4	14	0	4	17	6
Natal 4% 1937	94	4	5	6	5	0	0
New South Wales 4½% 1935-45	90	5	0	0	5	7	0
New South Wales 5% 1945-65	98	5	2	0	5	3	0
New Zealand 4½% 1945	98	4	12	0	4	17	6
New Zealand 5% 1945	103xd	4	17	0	4	16	0
Queensland 5% 1940-60	98	5	2	0	5	0	6
South Africa 5% 1945-75	103	4	17	0	4	16	0
South Australia 5% 1945-75	98xd	5	2	0	5	2	0
Tasmania 5% 1945-75	102	4	18	0	5	0	0
Victoria 5% 1945-75	98	5	2	0	5	0	0
West Australia 5% 1945-75	99	5	1	0	5	2	6
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corporation	64xd	4	13	6	—		
Birmingham 5% 1946-56	104	4	16	0	4	15	0
Cardiff 5% 1945-65	103	4	18	0	4	16	6
Croydon 3% 1940-60	71	4	5	0	4	16	0
Hull 3½% 1925-55	80	4	7	6	5	0	0
Liverpool 3½% Redeemable at option of Corporation	74	4	14	0	—		
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	54	4	12	0	—		
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	65	4	13	0	—		
Manchester 3% on or after 1941	65	4	13	0	—		
Metropolitan Water Board 3% 'A' 1963-2003	66	4	11	0	4	12	6
Metropolitan Water Board 3% 'B' 1934-2003	66½	4	11	0	4	12	6
Middlesex C. C. 3½% 1927-47	84	4	3	6	4	17	0
Newcastle 3½% Irredeemable	74	4	14	6	—		
Nottingham 3% Irredeemable	64	4	12	6	—		
Stockton 5% 1946-66	104	4	16	0	4	19	0
Wolverhampton 5% 1946-56	103	4	17	0	4	19	9
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	84	4	15	6	—		
Gt. Western Rly. 5% Rent Charge	102	4	18	0	—		
Gt. Western Rly. 5% Preference	95	5	5	0	—		
L. & N. E. Rly. 4% Debenture	78	5	4	0	—		
L. & N. E. Rly. 4% Guaranteed	73	5	10	9	—		
L. & N. E. Rly 4% 1st Preference	59	6	15	0	—		
L. Mid. & Scot. Rly. 4% Debenture	82¾	4	18	0	—		
L. Mid. & Scot. Rly. 4% Guaranteed	79	5	1	6	—		
L. Mid. & Scot. Rly. 4% Preference	71	5	14	0	—		
Southern Railway 4% Debenture	82¾	4	17	6	—		
Southern Railway 5% Guaranteed	99	5	1	0	—		
Southern Railway 5% Preference	91	5	10	0	—		

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EX-OFFICERS AND OTHER RANKS.

THE Proprietors of The Solicitors' Journal have placed this space at the disposal of THE BRITISH LEGION, OFFICERS' ASSOCIATION, EMPLOYMENT BUREAU, 3-4, Clement's Inn, Strand, London, W.C.2 (Telephone: Holborn 5769), to whom all replies should be addressed, quoting number of advertisement, date of insertion, and the name of this paper.

EX-CAPTAIN, four years' commissioned service, desires post as Representative Salesman, Traveller, Clerk, etc. Experience in wholesale and retail fruiterer and florists' business. Knowledge shorthand, typewriting and business routine. Non-smoker and teetotal. 10062.

EX-REGULAR Officer, I.A., 31, wants employment Home or abroad. Energetic and trustworthy. Good testimonials. 10077.

TO ESTATE Agents.—Wanted, position as Steward to residential flats by Ex-Captain, age 47, married. 8089.

EX-OFFICER, fluent French and Italian, Excellent knowledge Continent, seeks Secretarial, Office, or any work. 9853.

EX-OFFICER and Public School man requires position of trust, experienced manager, secretary, cashier, bookkeeper, also import, export, forwarding and road transport. 9594.

AS MALE Companion-Valet or Attendant, including duties if necessary as correspondence clerk, bookkeeping and general clerical work. Experienced horseman. Considerable experience travelling abroad. Practically total abstainer. Bachelor. Home or abroad. 6333.

PRACTICES AND PARTNERSHIPS.

ABLE, young Solicitor, 24 (June Final).—Second Class Honours, desires junior partnership (with or without preliminary clerkship), with firm having high-class conveyancing and commercial business, willing to invest capital.—Apply "D.," Box 591, Solicitors' Journal, 29 Breams-buildings, E.C.4.

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SOLICITOR (30), public school, with small but growing connexion and some capital, desires junior partnership in or near London, after probationary period. Experience in conveyancing, probate and general business. Would consider clerkship with prospects, at moderate salary, provided reasonable facilities for continuing private connexion available. Excellent references. Reply "A," Box 587, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITORS, with offices near Law Courts, offer assistance to solicitor(s) contemplating retirement, or will take over practice on annuity basis.—"E," Box 592, Solicitors' Journal, 29, Breams-buildings, E.C.4.

EXPERIENCED Solicitor with capital required for large conveyancing and family practice in Mid-Wales county town in consequence of death of principal. Knowledge of Welsh, and some social standing preferred.—Write Box 624, Reynells', 44, Chancery-lane, W.C.2.

PARTNERSHIP offered competent young Solicitor with some connexion and capital in London practice on advantageous terms.—"X.," Box 547, Solicitors' Journal, 29, Breams-buildings, E.C.4.

ENERGETIC solicitor, good advocate, requires sound litigious, conveyancing and general practice, in Kent.—Reply "B.," Box 525, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR wishes to purchase small practice in City for cash.—"B," Box 414, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR, practising own account, having well-situated offices London and good class business, wishes to meet another similarly situated with a view to amalgamation.—Reply "Z.," Box 424, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR desires to purchase Partnership or Succession (conveyancing, probate and general); moderate capital; preliminary working arrangement preferred.—Reply "A.," Box 330, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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LAW BOOKS.

WANTED.—Chitty's King's Bench Forms. 1923, last edition.—H, Box 17, Solicitors' Journal, 29, Breams-buildings, E.C.4.

ENCYCLOPÆDIA Laws of England, 2nd Edn. (17 Volumes with Supplements). Digest of Cases. 1865-1890 (3 Vols.), 1891-1895 and 1901-1905. Chronological Index to Statutes, 1235-1895 (2 Vols.) Current Index, 1917-1923. What offers part or whole?—"E.L." Box 585, Solicitors' Journal, 29, Breams-buildings, E.C.4.

ENGLISH and Empire Digest for sale on easy terms; books unused; approval with pleasure.—BM/WHKN.

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